

JOHN DONBOLI (SBN: 205218)  
jdonboli@delmarlawgroup.com  
JL SEAN SLATTERY (SBN: 210965)  
sslattery@delmarlawgroup.com  
DEL MAR LAW GROUP, LLP  
322 8<sup>th</sup> Street, Suite 101  
Del Mar, CA 92014  
Telephone: (858) 793-6244  
Facsimile: (858) 793-6005

Attorneys for Plaintiff: David Paz and all  
others similarly situated

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DAVID PAZ, an individual and on behalf of all  
others similarly situated,

Plaintiff,

vs.

PLAYTEX PRODUCTS, INC., a Delaware  
Corporation, and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO. 3:07-cv-2133-JM-BLM

**CLASS ACTION**

**PLAINTIFF'S OBJECTIONS TO  
AND REQUEST FOR AN ORDER  
STRIKING DEFENDANT'S  
SUBMISSION OF UNRELATED  
ORDER AND REFERENCES  
THERE TO IN DEFENDANT'S  
NOTICE OF REMOVAL**

ACCOMPANYING DOCUMENTS:

Notice of Motion and Motion;  
Memorandum of Points and Authorities;  
Evidentiary Objections to Declaration of  
Brenda Liistro

**[28 U.S.C. § 1447]**

Date: December 14, 2007  
Time: 1:30 p.m.  
District Judge: Hon. Jeffrey T. Miller  
Room/Floor: Room 16 / 5<sup>th</sup> Floor

**[NO ORAL ARGUMENT UNLESS  
REQUESTED BY THE COURT]**

Plaintiff DAVID PAZ ("Plaintiff") hereby objects to and seeks an order striking  
Defendant PLAYTEX PRODUCTS, INC.'s ("Defendant") submission of an unrelated court  
decision and all references thereto set forth in Defendant Playtex Product, Inc.'s Notice of

Removal of Civil Action Under 28 U.S.C. § 1441(B) (“Notice of Removal”) as follows:

**I. THE COURT ORDER IN LEVINE V. BIC USA, INC. IS NOT OF  
CONSEQUENCE TO THE DETERMINATION OF THIS ACTION**

The Notice of Removal relies heavily upon an unrelated decision issued by the Honorable Judge Larry A. Burns of the United States District Court, Southern District of California, in the case styled as *Levine v. BIC USA, Inc.*, 3:07-cv-01096-LAB-RBD (“*Levine* case”), denying a motion to remand for lack of subject matter jurisdiction (“Judge Burns Order”). The Judge Burns Order could only be relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel, which are inapplicable to this case. To be relevant, evidence must be “of consequence to the determination of the action.” Fed. R. Evid. 401. Here, Defendant fails to even make an argument as to why the Judge Burns Order is of “consequence to the determination of [this] action.”

**II. THE COURT ORDER IN LEVINE V. BIC USA, INC. IS IRRELEVANT AND IS  
INTENDED TO PREJUDICE PLAINTIFF AND PLAINTIFF’S COUNSEL**

Without any such supporting arguments supporting the relevance of the Judge Burns Order, the only conceivable purpose of including it as Exhibit “3” to the Notice of Removal is an attempt to prejudice the court against Plaintiff and Plaintiff’s counsel (“First, Plaintiff’s attorney, John H. Donboli, recently attempted to plead around CAFA in a similar class action lawsuit filed in the San Diego Superior Court against BIC USA, Inc.”). Notice of Removal, ¶ 8, at p. 3, lines 13-27. There is no legitimate purpose to include the inflammatory reference and exhibit. There is no justification for submitting the Judge Burns Order *in this case* based on his assessment of whether the Court had subject matter jurisdiction *in another case*. Moreover, because Defendant offers no legitimate purpose for these references, it can only appear as an attempt to generate prejudice and is indicative of bad faith.

**III. THE COURT ORDER IN LEVINE V. BIC USA, INC. CAN NOT PROPERLY BE  
JUDICIALLY NOTICED**

The submission of the Judge Burns Order is essentially a misguided attempt by Defendant to have this Court to take judicial notice of the ruling in the *Levine* case. Analyzed

pursuant to Rule 201 of the Federal Rules of Evidence (“Rule 201”), however, Defendant’s attempt to introduce the Judge Burns Order would still be improper. Rule 201 specifically states that the scope of the Rule governs only “judicial notice of adjudicative facts” that “must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” The document presented by Defendant as Exhibit “3” *in this case* is neither an adjudicative fact, nor a legislative fact.

The Advisory Committee notes of the Rule provides that “[a]djudicative facts are simply the facts of the particular case,” whereas legislative facts “are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or the enactment of a legislative body.” Legislative facts are “established truths, facts or pronouncements that do not change from case to case but [are applied] universally.” *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976). Legislative facts are facts of which courts take particular notice when interpreting a statute or considering whether a congress has acted within its constitutional authority and frequently include requests to take judicial notice of legislative history, including committee reports. *See Territory of Alaska v. American Can Co.*, 358 U.S. 224 (1959).

#### IV. CONCLUSION

Therefore, Plaintiff objects to the Judge Burns Order as irrelevant and prejudicial and hereby moves to strike it as well as all references thereto because Plaintiff is not litigating *in this case* the remand issues that were applicable and litigated in another case.

Dated: November 13, 2007

Respectfully submitted,

DEL MAR LAW GROUP, LLP

by s/John H. Donboli  
 JOHN H. DONBOLI  
 E-mail: jdonboli@delmarlawgroup.com  
 JL SEAN SLATTERY  
 Attorneys for Plaintiff DAVID PAZ, an individual  
 and on behalf of all others similarly situated